IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Bail Appl..No. 4929 of 2007()

CRIME NO.114/07 OF CHENGAMANAD POLICE STATION

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PETITIONER/ACCUSED NO.2:

UNNIKRISHNAN NAIR P.G., AGED 56,
S/O. E.N. GOPINATHAN PILLAI, PARATTU HOUSE,
MANAKKAPADY, ASOKAPURAM P.O., ALUVA.

BY ADV. SRI.V.M.SAJAN
SRI.JAISON JOSEPH

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
CRIME DETACHMENT OFFICE, ALUVA.

3. SUB INSPECTOR OF POLICE,
CHENGAMANAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4929 OF 2007

Dated this the 21st day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He faces allegations, inter alia, under Secs.120B and 468 of the IPC and Sec.12(1)(b) of the Indian Passport Act. Altogether, there are two accused persons. The 1st accused allegedly applied for a passport. She applied for the passport in a fake name and address. The petitioner – a police official, is alleged to have, in furtherance of a criminal conspiracy, made false and incorrect reports to enable the 1st accused to secure a passport in the name of one Annie. This was allegedly done with culpable and contumacious intentions. This is the crux of the allegation.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner does not know the 1st accused personally. Even assuming that there is

an error in the report, ready and easy inference of conspiracy and culpability may not be drawn against the petitioner. The petitioner is willing to abide by any conditions. Anticipatory bail may, in these circumstances, be granted to the petitioner, it is prayed.

3. Notice was given. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that the sequence of events in this case and the circumstances convincingly point to the unerring conclusion that the petitioner was wilfully a party to the conspiracy to make a passport available to the 1st accused in the false name and fake address of one Annie. It cannot at all be reckoned as an erroneous and negligent performance of duty by the petitioner. The indications galore to suggest that the petitioner was a conspirator and had knowingly worked to ensure issuance of an undeserved passport to the 1st accused. The learned Public Prosecutor submits that the petitioner is an accused in other similar crimes also. At any rate, this is not a fit case where the petitioner is entitled to the protection of an order under Sec.438

of the Cr.P.C. The petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. The Case Diary has been placed before the Court for my perusal. The relevant pages were duly flagged by the learned Public Prosecutor. I have perused the Case Diary. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that, on an evaluation of all the relevant inputs, I am not persuaded to agree that this is a fit case where the equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioners. The petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the

learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

Nan/ **(R. BASANT, JUDGE)**

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P.S. to Judge